



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1993

Ms. Sharon Gillespie
Assistant General Counsel
Texas Department of Banking
2601 N. Lamar Boulevard
Austin, Texas 78705-4294

OR93-557

Dear Ms. Gillespie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 20766.

The Texas Department of Banking (the "department") has received a request for a copy of portions of a certain banking application. Specifically, the requestor seeks a copy of "the public file containing the non-confidential portions of the . . . application of the Elsa State Bank & Trust Company to establish a branch in Roma, Star County, Texas." You have submitted to us the following documents for review: correspondence dated June 1, 1993, from Elsa State Bank & Trust Company to the department; numerous documents submitted to the department by the bank that concern the financial condition of the bank; and a "Certification of Account Status" issued by the Comptroller of Public Accounts.² You claim that the financial documents and "Certification of Account Status" are excepted from required public disclosure by sections 552.101, 552.110, and 552.112 of the act.³

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You advise us that the correspondence dated June 1, 1993, has been made available to the requestor.

³As you do not comment on the remainder of the application file, we presume it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

We understand that the branch bank application at issue was submitted to the department pursuant to article 342-903, V.T.C.S., of the Texas Banking Code. Section 3.91 of Title 7 of the Texas Administrative Code governs the application procedure for the establishment of branch banks pursuant to article 342-903. It provides, in part, that a "public file shall be established by the Texas Department of Banking in the case of each application." Section 3.91 also provides:

That file shall consist of the application with supporting data and supplementary information, *except for material deemed by the commissioner, in accordance with applicable law, to be confidential, such as trade secrets normally not available through commercial publication or other information made confidential under the Texas Open Records Act or the Texas Banking Code.* In addition, the public file shall contain all data and information submitted by interested persons or entities in favor of or in opposition to such application, excluding any material deemed by the commissioner, in accordance with applicable law, to be confidential. Information may be deemed confidential and withheld from the public file only upon request of the person or entity submitting the information. All factual information submitted to or obtained by the Texas Department of Banking staff shall also be made part of the public file, unless deemed confidential by the commissioner. *In no event shall information required by statute or regulation to be treated as confidential be made a part of a public file.* [Emphasis added.]

7 T.A.C. § 3.91(f)(4).

In essence, the department claims that the financial documents and "Certification of Account Status" are confidential under the Texas Banking and Texas Tax Codes, respectively, and are therefore not part of the public file or available to the public under the Open Records Act. Specifically, you claim that subsection (a) of article 342-210, V.T.C.S., of the Texas Banking Code, makes the financial documents submitted to the department confidential and that section 171.206 of the Texas Tax Code makes the "Certification of Account Status" confidential. You claim that these documents are therefore excepted from required public disclosure under section 552.101 of the act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Article 342-210(a) of the Texas Banking Code provides in part:

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank or bank holding company other than call reports and profit and loss

statements, whether obtained through examination or otherwise, except published statements, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of said Department.

The financial documents submitted to us for review were obtained by the department and concern the financial condition of a bank. The exclusions from confidentiality set forth in article 342-210(a) are not applicable here. We agree with your contention that this information is made confidential by law.⁴ Therefore, this information is confidential under section 552.101 of the act and may not be released.

Section 171.206 of the Texas Tax Code provides:

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

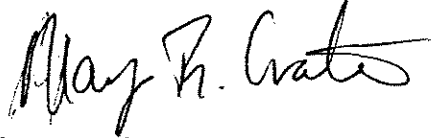
(2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

In Attorney General Opinion H-223 (1974), this office construed articles 1.031 and 20.11(G), Title 122A, Taxation - General, V.T.C.S. (1969), the statutory predecessors of sections 111.006 and 151.027 of the Tax Code, concluding that "the mere fact" that a taxpayer had requested a hearing on certain matters was not confidential under these provisions. *See generally* Open Records Decision Nos. 212 (1978); 88 (1975) (although content of a communication may be confidential, fact that communication has been made is not). The "Certification of Account Status" is analogous to the information at issue in Attorney General Opinion H-223. It reveals that the Elsa State Bank & Trust Company has filed its franchise tax reports, but does not reveal the content of the tax reports. We conclude, therefore, that the "Certification of Account Status" is not made confidential by section 171.206 of the Texas Tax Code. Accordingly, this document may not be withheld from required public disclosure by section 552.101 of the act and must be released.

⁴We also note that because this information is made confidential by law, it is not part of the public file, and is therefore not encompassed by the request for information.

If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/rho

Ref.: ID# 20766
ID# 21059

cc: Mr. William J. McDonough, Jr.
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